C.H. ROBINSON COMPANY v. BUDDY'S PRODUCE, INC.
PACA Docket No. R-02-0021.
Order of Dismissal.
Filed August 21, 2002.

Election of Remedies – trust action in federal district court as affecting Res judicata – effect of voluntary dismissal with prejudice on parallel litigation before the Secretary.

Where Complainant filed a trust action in federal district court involving the same parties and subject matter as in a reparation action before the Secretary, and the trust action was opposed by Respondent, there was no election of remedies under section 5(b) of the Act. A voluntary dismissal with prejudice in the trust action by order of the District Court upon stipulation of the parties was res judicata of all the issues before the Secretary, and precluded maintenance of the claim before the Secretary. The complaint was dismissed.

George S. Whitten, Presiding Officer.
Ben G. Campbell, for Complainant.
Pro se, for Respondent.
Order of Dismissal issued by William G. Jenson, Judicial Officer.

This is a reparation proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.). On January 16, 2001, Complainant filed a formal complaint alleging the sale and shipment to Respondent of various lots of perishable produce between January 31, 2000, and July 10, 2000.[1] In addition Complainant alleged Respondent's acceptance of the produce, and that Respondent failed to pay the contract prices totaling $26,510.00.

On February 26, 2001, Complainant filed a trust action under section 5(c) of the Act[2] against Respondent, and Respondent's principals, in the United States District Court for the Western District of Oklahoma alleging failure to maintain the statutory trust as to the same transactions that are covered by the complaint herein, and, inter alia, breach of contract by failure to pay for the produce. Respondent filed an answer in the reparation proceeding before the Secretary on March 30, 2001, alleging that the produce shipped was distressed, and that the transactions were adjusted between the parties. On April 4, 2001, Respondent filed an answer in the trust action denying any liability to Complainant. On July 27, 2001, the parties were notified in the reparation action that the submission of evidence had been completed, and that the record was closed. On October 2, 2001, the parties to the reparation proceeding were notified that the time for the filing of briefs had expired, and that the matter was being assigned to a Presiding Officer for the preparation of a decision.

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[1] A timely informal complaint covering the same transactions was filed on October 26, 2000.

[2] 7 U.S.C. 499(e)(c).

On January 25, 2002, the parties to the District Court action filed with the Court a "STIPULATION AND ORDER FOR DISMISSAL." This document was signed by the attorneys for each party. The body of the document consisted of one sentence as follows: "The undersigned counsel for Plaintiff and Defendants hereby stipulate and agree that the within civil action may be dismissed with prejudice and without costs to any party, pursuant to Federal Rule of Civil Procedure 41(a)." On January 28, 2002, the court entered the following order:

ORDER

> Now, on this 28th day of January, 2002, this matter comes before this Court upon the stipulation of the parties that the civil matter designated as CIV-01-349(R) should be dismissed with prejudice and without costs to any party, pursuant to Federal Rule of Civil Procedure 41(a), and this Court, being advised in the premises and for good cause shown, finds that this Order should be granted.
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> IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the civil matter CIV-01-349(R) is hereby dismissed with prejudice and without costs to any party, pursuant to Federal Rule of Civil Procedure 41(a).

On January 31, 2002, Respondent's counsel filed a motion with this Department to dismiss the reparation action on the basis of lack of jurisdiction resulting form Complainant's having made an election of remedies by the filing of the trust action, and on the basis of claim preclusion resulting from the voluntary dismissal in the District Court. On April 15, 2002, Complainant filed a response to this motion.

The District Court action was an action for the enforcement of the statutory trust, and, in and of itself, would not normally involve an election of remedies. In the event that a trust claim is contested on the merits it is our policy to stay reparation actions pending the outcome of the district court action, and to treat the final judgment in the district court as res judicata of the issues in the reparation case. Furthermore, it is also our policy to not treat the filing of a separate civil court action as an election of remedies under section 5(b) when there is a voluntary dismissal by the party instituting the action.[3] We conclude that Respondent has not shown that an election of remedies pursuant to section 5(b) took place.

In this case the voluntary dismissal in the District Court was with prejudice. A dismissal with prejudice implies an adjudication on the merits, which bars the right

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[3] *See Han Yang Trade Co., Inc. v. A.F. & Sons Produce, Inc.*, 52 Agric. Dec. 765 (1993); *Spring Acres Sales Company, Inc., v. Freshville Produce Distributors, Inc.*, 45 Agric. Dec. 2181 (1986); and *Gilliland & Co. v. San Antonio Commission Co.*, 2 Agric. Dec. 492, at 495 (1943).

to bring or maintain an action on the same claim.[4] Normally such a dismissal is res judicata as to every matter in issue. Complainant, however, in its response to the motion to dismiss, alleges that the intent of the parties was that the dismissal not preclude the continuance of this reparation case, and that the purpose of the dismissal was to avoid duplicate litigation and conform with the election of remedies requirement of section 5(b). Complainant's counsel attached an affidavit to the response to the motion to dismiss. This affidavit was given by Mark A. Amendola, Esq., an Ohio attorney who was retained by Complainant to handle the trust litigation, and who negotiated and signed the dismissal stipulation. Mr. Amendola stated in part:

> There was no settlement or compromise of the District Court case. Moreover, there was no value and no consideration for the dismissal of the District Court case. Prior to executing the Stipulation for Dismissal, I discussed with Buddy's counsel the possibility of Robinson agreeing to also dismiss its pending reparation claim in exchange for an appropriate settlement payment. Buddy's did not accept that proposal and it was my understanding that both parties preferred to obtain a final adjudication on Robinson's claim from the Secretary of Agriculture.

Complainant asserts that in "determining the preclusive effect of a stipulation of dismissal, the courts . . . routinely look to the intent of the parties," and urges that, in accord with the affidavit of the Ohio attorney quoted above, the intent of the parties was that the dismissal not have preclusive effect. In 1975 the United States Supreme Court stated that:

> Since a consent decree or order is to be construed for enforcement purposes basically as a contract, reliance upon certain aids to construction is proper, as with any other contract. Such aids include the circumstances surrounding the formation of the consent order, any technical meaning words used may have had to the parties, and any other documents expressly incorporated in the decree . . .[5]

The Court was interpreting an elaborate consent decree issued in a Federal Trade Commission case that prohibited the "acquiring" of certain assets. It was undisputed that the decree had been violated, but for purposes of assessment of

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[4] *See Chase Manhattan Bank, N.A. v. Celotex Corp.*, 56 F.3d 343, 345 (2d Cir.1995); *Brooks v. Barbour Energy Corp.*, 804 F.2d 1144, 1146 (10th Cir.1986); *Clark v. Haas Group, Inc.*, 953 F.2d 1235, 1238 (10th Cir.), *cert. denied,* 506 U.S. 832, 113 S.Ct. 98, 121 L.Ed.2d 58 (1992).

[5] *United States v. ITT Continental Baking Co.*, 420 U.S. 223 at 238 (1975).

penalty it was questioned whether daily penalties could be assessed for the violation of a decree that prohibited only acquisition, allegedly a one time event. The Court found, in essence, that reference to the agreement between the parties and supporting documents was permissible to ascertain the meaning of an ambiguous word in the consent decree. Numerous circuits have followed this case in stating that the intent of the parties is an element for inquiry in connection with the determination of whether a voluntary dismissal with prejudice based upon a settlement agreement should have a claim preclusive effect.[6] However, it should be noted that the holding of the Court was based squarely upon the contractual nature of the consent decree, and the cases that have followed this holding have made similar observations. However, in this case Complainant's contention that "[t]here was no settlement or compromise of the District Court case," and that "there was no value and no consideration for the dismissal . . .," argues against considering the intent of the parties, since it eliminates any contractual element in the voluntary dismissal.

There is another consideration that bears upon this question. Were we to say, in spite of the above reasoning, that there is a substantial contractual element to the voluntary dismissal so as to open the possibility of an inquiry into the intent of the parties, the cases which allow such an inquiry presuppose an ambiguity in the stipulation such as would make an inquiry as to the intent of the parties appropriate in the same manner in which it would be in a purely contractual context.[7] Here there was no ambiguity in the stipulation or order, and it must be deemed a final adjudication on the merits for res judicata purposes of the claims asserted, or which could have been asserted, in the District Court trust action.[8] Furthermore, a misunderstanding by the parties as to the legal effect of an agreed upon dismissal

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[6] *See*, for example, *Ronald F. Keith v. Edward C. Aldridge, Jr.*, 900 F.2d 736 (Fourth Cir. 1990), *cert. denied,* 498 U.S. 900, 111 S.Ct. 257, 112 L.Ed.2d 215 (1990), where the court stated: "When a consent judgment entered upon settlement by the parties of an earlier suit is invoked by a defendant as preclusive of a later action, the preclusive effect of the earlier judgment is determined by the intent of the parties. . . . This approach, following from the contractual nature of consent judgments, dictates application of contract interpretation principles to determine the intent of the parties." The court then looked to the "mutually manifested . . . intentions" of the parties, noting that "the settlement agreement and the dismissal order entered pursuant to it do not expressly reserve to Keith the right to raise due process or other substantive claims in subsequent litigation."

[7] *Israel v. Carpenter*, 120 F.3d 361(2nd Cir. 1997) (applying Massachusetts law that "in order to utilize extrinsic evidence of the parties' intent, a court need not invariably find facial ambiguity."); *Coakley & Williams Construction, Incorporated v. Structural Concrete Equipment, Incorporated*, 973 F.2d 349 (4th Cir. 1992); *Marvel Characters, Inc. v. Simon,* No. 00 CIV. 1393(RCC), 2002 WL 313865 (S.D.N.Y. Feb. 27, 2002); *WILJ International Limited v.Biochem Immonusystems, Inc.*, 4 F.Supp.2d 1(D. Mass. 1998).

[8] *Marvel Characters, Inc. v. Simon*, No. 00 CIV. 1393(RCC), 2002 WL 313865 (S.D.N.Y. Feb. 27, 2002).

with prejudice does not warrant voiding the agreement,[9] and, where "a genuine misunderstanding had occurred concerning the stipulation's scope" it was held that counsel's misunderstanding could not void the agreement, even though "the consequences of entering into [the] agreement were not fully weighed" and "the choice was poor."[10]

Complainant, in resisting Respondent's motion for dismissal, asserts that a 1913 Oklahoma case requires that for a dismissal of a suit to have a preclusive effect it must be "based upon an agreement between the parties by which a settlement and adjustment of the subject matter is made."[11] Complainant argues that since there was no settlement or adjustment between the parties to the District Court action, preclusive effect should not be given to the voluntary dismissal with prejudice. However, we are here dealing with an order of a federal district court in a federal trust case, not a diversity case, and it is clear that federal law must determine the interpretation of the order.[12] Under federal law:

> . . . where there is no settlement agreement at all, there is nothing for the court to consider other than the voluntary dismissal with prejudice, which . . . is sufficient by itself to invoke the preclusive effect of res judicata.[13]

We conclude that Complainant's claim in this reparation proceeding is precluded by the dismissal with prejudice of the trust action in the District Court. The complaint should be, and hereby is, dismissed.

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[9] *TCBY Systems, Inc. v. EGB Associates, Inc.*, 2 F.3d 288 (8th Cir. 1993); and *Citibank, N.A. v. Data Lease Financial Corporation*, 904 F.2d 1498 (1990) ". . . misunderstanding as to the legal effect of a dismissal with prejudice does not warrant a hearing."

[10] *Nemaizer v. Baker*, 793 F.2d 58 (2d Cir.1986).

[11] *Turner v. Fleming,* 130 P. 551 (OK 1913).

[12] *Semtek International Incorporated v. Lockheed Martin Corporation*, 531 U.S. 497 (2001); *Heck v. Humphrey*, 512 U.S. 477, at 488 n. 9 (1994) "It is clear that where the federal court decided a federal question, federal res judicata rules govern," quoting P. Bator, D. Meltzer, P. Mishkin, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 1604 (3d ed. 1988); *Deposit Bank v. Frankfort*, 191 U.S. 499 (1903). *See also Hallco Manufacturing Co., Inc. v. Raymond Keith Foster*, 256 F.3d 1290 (Fed. Cir. 2001); *Foster v. Hallco Mfg. Co.*, 947 F.2d 469 (Fed.Cir.1991); *PRC Harris, Inc. v. the Boeing Company,* 700 F.2d 894 at n. 1(2nd Cir.1983).

[13] *Edward T. Hanley v. Cafe Des Artistes, Inc.*, No. 97 Civ. 9360(DC), 1999 WL 688426 (S.D.N.Y. Sept. 3, 1999) (mem.)